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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 11th December 2007

No. 13309—li-1(J)-27/2006-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th August 2007 in Industrial Dispute Case No. 19 of 2006 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of the Executive Engineer, Padagada Dam Division, At/P.O. Khatiguda, Dist. Nawarangpur and its workman Shri Gourang Bag was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 19 OF 2006

Dated the 4th August 2007

Present :

Shri G. K. Mishra, o.s.j.s. (Jr. Branch)
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between :

The Executive Engineer,
Padagada Dam Division,
At/P.O. Khatiguda,
Dist. Nawarangpur . . . First Party—Management

Versus

Shri Gourang Bag
At Karla Kot, P.O. Banjana
Dist. Kalahandi. . . Second Party—Workman

Under Sections 10 and 12 of the Industrial Disputes Act, 1947

Appearances :

For the Management	.. Self
For the Workman	.. Self
Date of Argument	.. 2-8-2007
Date of Award	.. 4-8-2007

The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 11269(4), dated the 20th December 2006 for adjudication of the following disputes :—

SCHEDULE

“Whether the action of the Executive Engineer, Podagada Dam Division, At/Post Khatiguda, Dist. Nawarangpur in retrenching by way of disallowing/in disengaging Shri Gourang Bag, Ex-Contingent Khalasi with effect from the 12th January 1997 is legal and/or justified ? If not, what relief the workman is entitled to ?”

AWARD

2. This is a case originated under reference submitted by the Government for determination of the illegality as well as propriety of retrenchment by way of disallowing or disengaging the workman effected by the act of management Opposite Party with effect from the 12th January 1997 coupled with any relief to be granted in consequence of the determination in favour of the workman.

3. The plea of the workman has basically repudiate on the point of refusal to engage in the post of Contingent Khalasi to have been admitted by him by virtue of the order passed by the management from time to time till the 11th January 1997 with explanation being supplied that due to ill health it was not possible on his part to assume his duties as entrusted for which the long absence promoted the management to disengage him from the duty despite repeated approach made by him to the management. The disengagement by way of retrenchment by not allowing him to work even though his intention to do work and the act done by the management was purely illegal for the non-serving of notice prior to such disengagement.

4. The management on the contrary traversed the entire assertions put forth by the workman and contended *inter alia* that the workman having voluntarily abandoned his service without joining his duty notwithstanding the order of entrustment being in existence till the 8th March 1997 there is no question of treating it as retrenchment or disengagement for the purpose of attracting the provisions under Section 25-F of the Industrial Disputes Act, for which no illegal has been committed for entertaining refusal to such workman to do away with the engagement.

5. A reference has been preferred by the Government for determination of the legality of termination. The disputed issue of refusal to disengagement the workman by the Executive Engineer, Padagada Division with effect from the 12th January 1997, appears *prime facie* to be in consonance with the plea entertained by the workman. The workman has never been engaged by the Executive Engineer, Padagada Division which is totally dislinked from the Executive Engineer, Power House Division. The workman was not being engaged by the Project under the Control Division operating in the Indravati Project. The respective divisions were authorised to engage outsiders as Contingent Khalasi to work in different works under different officers for certain period with issuance of positive order for executing their work. As evidenced from Ext. B series, appointment of such workman seems to have been done by the Executive Engineer, I. H. R. Division and attached him to M. N. Patnaik, Executive Engineer (C) and work was being done by the workman since the date of appointment order 1992 to 1997 till he was disengaged. The disquieting future appears or cropped up here is that consequent upon the completion of the project in its intity was merged with the Executive Engineer, Padagada Division, Khatiguda as shown vide Ext. -A with effect from the 9th January 2002. The merger has been effected much after the disengagement entertained by the Executive Engineer, Power House Division, Mukhiguda under which the workman was serving as a Contingent Khalasi. The merger with Podagada Division does not reflect in the order of reference that the workman was disengaged or disallowed to work by the Executive Engineer, Padagada. There might be mergered of the Division but issue to be determined is different taking into the above consideration. The issue referred for determination has not appropriately or appreciately been framed by the Government by incorporating proper wording without concentrating the mind of analysing facts, circumventy the claims of the parties. The D. L. O. while recommending the issue after having conceived the failure of settlement has not gone into deep contingency arose during the course of settlement and not analytically as similated the plea or claims properly put forth by the parties for which intrinsic defects resulted in for prejudicing interest of the claims. It appears that the issue has been fromed hazzardly without going deep into the claim with due care avoiding ambiguity or controversy. The Government should be assidous to while framing the issue in proper perspective. An order of reference seems to have been hastily done in a casual manner often gives rise to necessary disputes thereby prolonging the life of litigation as well as industrial adjudication which must be avoided. Even though when the equivocable issue is raised or referred to the Court, the court can not sit as a silent spectator taking adverse inference at the very inception by construing the reference by not resorting to too much technical or pedantic manners but fairly and reasonably taking into very background of the claim entertained by the both parties. On disputedly the workman was serving as a Contingent Khalasi being engaged from time to time with some break under different officers working under the Control Division, Mukhiguda as revealed from Ext. B., Ext. C-68 to Ext. C-73 and C-77, Ext. C is the appointment order which was intermittent and purely temporarily in nature. He was attached to M. N. Patnaik, Assistant Executive Engineer from time to time with condition to be terminated without any

reason and also by any officers who is transferred to that place. He recommended for non-engagement and termination of their services. In case of appointment of casual labourers their services after expiry of the period is likely to be terminated. In case of daily wage labourers termination at the end of the day is inherently construed. Their continuation in service is not enforced and they can not accrue any right as regards the continuity of the service in the interest of the workman. In Industrial Disputes Act, 1947 it has been enacted if any workman renders continuous of service for a period of more than 240 days in a calendar year prior to the termination of the service, notice is required. This is provided only to certify the security of the service and the loss to be compensated. Otherwise inference can not be drawn for continuity of service. In the instant case the workman though from time to time was engaged under M. N. Patnaik, Assistant Executive Engineer but there is no continuity in the service as shown vide Exts. C & B series and in respect of his work he has already received the amount. In the last part of the service he was engaged from the 8th December 1996 to the 8th March 1997. Even though he was engaged in service but he was found default in the attendance to do his job from the 11th January 1997. After that he did not come to attend job as entrusted. Till the 8th March 2007 no termination has given prior to the expiry of the said period. The workman has voluntarily received salary from the job without intention to consume the same from his work done. He has also received salary of Rs. 231 for eleven working days. As shown vide Ext. C-65. He appears to have received his salary on the 10th February 1997, 20 days after the break of his service. At the time of receipt of salary he did not even extent to resume his duty nor has approached the authority to join in his duty. This seems that he had no intention or right to join in his job even after the departure from the job from the 11th January 1997. The voluntary abandonment of service is clear from his conduct. In this connection termination can not be easily inferred nor retrenchment can be construed. Prior to the expiry of the period of the engagement he has been withheld from the service. So the allegation of retrenchment or termination does not arise and no notice is required to serve on him due to voluntary withdrawal from the service he was never denied to re-engage in the service had he ever been approached by the time of receipt of the salary on the 10th February 1997. Apart from that, the calculation sheet as revealed from Ext. C series that the workman has not completed 240 days in a calendar year even excluding Sundays. No requirement seems to have fulfilled for attracting the provisions under Section 25-F of the Industrial Disputes Act.

6. The project was operated for a specific period. After this completion it was merged with Executive Engineer, Padagada Division vide letter No. 157, dated the 9th January 2002 under Ext. A. No responsibility has been fixed or liability endorsed on the Podagada Division for due compliance of the provisions, as because the workman has never been appointed under Podagada Division as admitted by him. Whether the workman is completed after the expiry of definite period the nature of job can not be construed to be continuing thereby taking

inference to the continuity of the service of the workman for the purpose of attracting the provision under Section 25-F of the Industrial Disputes Act. There being no continuity in service and for agreed more than 240 days and the service itself by temporary in nature with inherent effect of termination, there is no question of requirement of compliance for serving notice on the workman. Since the workman has taken leave of service without intention of resuming duty, the workman's absence from duty can not be construed either as termination or retrenchment. Accordingly the issue is considered misconceived. The authority has not committed illegality either terminating or retrenching him from the service. It is only considered as voluntarily abandonment of service.

ORDER

The issues are answered accordingly.

Dictated and corrected by me.

G. K. MISHRA
4-8-2007
Presiding Officer
Labour Court, Jeypore, Koraput

G. K. MISHRA
4-8-2007
Presiding Officer
Labour Court, Jeypore, Koraput

By order of the Governor
P. MALLICK
Under-Secretary to Government